IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6788 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVKISHAN BADRINARAYAN SOMANI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR CHETAN K PANDYA for Applicant(s) : 1,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/06/2007

ORAL JUDGMENT

1. Present application has been filed by the applicant – original accused No. 4 under Section 482 of the Code of Criminal Procedure to quash the F.I.R. being I CR No.125 of 2005 registered

with Mahidharpura Police Station, Mahidharpura, Surat for the offence punishable under Sections 420, 465, 467, 468, 471, 120(B) r.w. Section 114 of the I.P.C.

2. A complaint being F.I.R. No. I CR No. 125 of 2005 is filed by the Assistant – General Manager of Oriental Bank of Commerce against the applicant and other co-accused for the offence punishable under Sections 420, 465, 467, 468, 471, 120(B) r.w. Section 114 of the I.P.C., alleging inter alia, that the partnership firm M/s. Kunjbihari Exports through their partners approached the Union Bank of India, Station Road, Surat to have export finance and the said M/s. Kunjbihari Exports belongs to Somani Group of Companies of Surat. It is alleged in the complaint that the Manager of the Union Bank of India inquired from the complainant and inquired as to whether they have issued any confidential letter dated 13.11.2005 on the letter pad of the bank and having a round seal of the Oriental Bank of Commerce and whether such a letter has

been issued in favour of M/s. Somani Cotsynth Limited and M/s. Kanha International for issuance of credit information report and on verification, it was found that such a letter has not been issued by the bank. It is alleged in the complaint that by creating such a bogus confidential report of the Oriental Bank of Commerce and producing the same with the Union Bank of India, the persons named in the complaint inclusive of the applicant have committed the aforesaid offences.

3. That the applicant has preferred the present application under Section 482 of the Code of Criminal Procedure for quashing the aforesaid complaint contending inter alia that so far as the applicant is concerned, at the relevant time, he was not the Director of the company and had already resigned as a Director in the year 2002. The learned counsel appearing on behalf of the applicant has relied upon the letter written by one Parsottam Somani, one of the co-accused, addressed to Police Inspector, Mahidharpura

Police Station informing that the applicant is in no way connected with the said offence and that he himself was responsible for the transactions and he was the only person who was looking after the day to day transactions of the companies including that of loan. Relying upon the aforesaid document and other documents, it is requested to quash the impugned complaint. No other submissions have been made.

4. Application is opposed by Shri Kodekar, learned APP by submitting that the charge-sheet against other co-accused, more particularly, accused No.1 is already filed by the police, however, as the applicant is absconding and was not available for interrogation and investigation, criminal complaint is not further investigated against the applicant and when the applicant has not cooperated in the investigation and as the charge-sheet is already filed against one of the co-accused and in the charge-sheet the applicant is declared as absconder and/or not arrested, it is requested not to exercise the discretionary

powers under Section 482 of the Code of Criminal Procedure. It is also further submitted by the learned APP that at this stage this Court may not embark upon an inquiry as to reliability of evidence and sustainability of allegations. It is submitted that on considering all the allegations in the complaint, the ingredients of the offence are disclosed and as there is no allegation of malafide, it is requested not to quash the F.I.R.

5. Heard the learned advocates appearing for the respective parties.

6. It is required to be noted that the impugned complaint has been filed on 27.5.2005 and the present application for quashing the F.I.R. is filed on 18.6.2007 i.e. almost after a period of two years. It is also required to be noted that the charge-sheet is already filed against the accused No.1 and the name of the applicant is shown in column No.2 i.e. absconding / not arrested. Thus, prima facie, it appears that the

applicant has not cooperated the Investigating Officer, otherwise along with the charge-sheet against another co-accused either charge-sheet might have been filed against the present applicant or appropriate report would have been filed. Under the circumstances, as the remedy under Section 482 of the Code of Criminal Procedure is discretionary, the applicant is not entitled to any discretionary equitable relief in the present application.

7. Apart from the above, even on considering the complaint as a whole, it cannot be said that the allegations do not disclose criminal offences which do not require further investigation. On considering the allegations contained in the complaint, taken on their face value, it appears to the Court that the offences under the Penal Code are constituted. It is also required to be noted that as such, there is no material to show that the complaint is malafide, frivolous and vexatious for which proceedings are requited to be quashed. As held by the Hon'ble Supreme Court

in case of ***State of Orissa & Another V/s. Saroj Kumar Sahoo*** reported in **(2005) 13 SCC 540,** exercise of power under section 482 of the Criminal Procedure Code is an exception and not the rule. It is further held by the Hon'ble Supreme Court that while exercising the powers under section 482 of the Criminal Procedure Code, the High Court does not function as a Court of appeal or revision and inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution. It is also further observed that the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. It is also held by the Hon'ble Supreme Court that

inherent power should be exercised sparingly and that too in the rarest of rare case. As held by the Hon'ble Supreme Court, a complaint can be quashed if the allegations made in the complaint even if they are taken at their face value and accepted in entity do not prima facie constitute any offence or make out the case as alleged against the accused and for that purpose, the complaint has to be examined as a whole without examining the merits of the allegation. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint. A complaint may also be quashed where it is a clear abuse of the process of the court, as when criminal proceeding is found to have been initiated with malafides / malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable. As stated above, there is no such allegation of malafide / malice. As observed by the Hon'ble Supreme

Court, the power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution. Thus, considering the above and the allegations contained in the complaint, taken on their face value, it cannot be said that no case is made out constituting offence under the Penal Code, which requires further investigation as well as no case has been made out to quash the F.I.R. at the threshold, more particularly, when the charge-sheet has already been filed against the other co-accused and as stated hereinabove, the name of the applicant is shown in column No.2 as absconder / not arrested.

8. Now, so far as reliance placed upon the letter written by one Purushottam Somani addressed to the Investigating Officer to the effect that he was in day to day affairs of the company is concerned, it is required to be noted that he himself is one of the co-accused and against him charge-sheet is already filed. Whether the

applicant was in day to day affairs and/or was connected with the transactions and/or party to the conspiracy is required to be considered on further investigation. Therefore, on the basis of the communication by one of the co-accused, the complaint is not required to be quashed at this stage and the case is required to be further investigated by the Investigating Officer.

9. For the reasons stated above, no case is made out to quash the complaint in question in exercise of the powers under Section 482 of the Code of Criminal Procedure. Hence, the present application is required to be dismissed and is accordingly dismissed.

[M.R.Shah, J.]

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